

financing limitation authorized in the Financing Application for the immediate parent of the financing entity. However, the underlying intra-system mirror debt and parent guarantee shall not be so included.

KeySpan requests that the Commission modify the authorizations in the Financing Order regarding the Financing Subsidiaries as follows: (i) With respect to item 1 above, authorization for these Financing Subsidiaries to issue preferred stock or other securities that are convertible into or exchangeable for KeySpan common stock; (ii) with respect to item 2(a) above, KeySpan, in addition to its Subsidiaries, has authority to issue debentures or other evidences of indebtedness to a Financing Subsidiary in return for the proceeds of the financing; (iii) with respect to item 2(b) above, KeySpan, in addition to its Subsidiaries, has authority to acquire voting interests or equity securities issued by a Financing Subsidiary to establish any such Subsidiary's ownership of a Financing Subsidiary (the equity portion of the entity generally being created through a capital contribution or the purchase of equity securities, ranging from one to three percent of the capitalization of the financing entity); (iv) with respect to item 3 above, KeySpan, in addition to each of the Subsidiaries, is authorized to enter into an expense agreement with its respective Financing Subsidiary, under which it would agree to pay all expenses of the Financing Subsidiary; and (v) with respect to item 4 above, any amounts issued by these Financing Subsidiaries to third parties under this authorization will be included in the overall external financing limitation authorized in the Financing Order or this proceeding, as applicable, for the immediate parent of the financing entity.

In addition, the Financing Order authorized KeySpan to issue debt securities under the KeySpan Indenture. In connection with the modifications requested above regarding KeySpan's actions in connection with Financing Subsidiaries, KeySpan requests that its authorization under the Financing Order be modified to include the following: (a) Any securities issued by KeySpan will be unsecured and, except as set forth in (b) below, unsubordinated obligations of KeySpan, and (b) debt securities issued only to a direct Financing Subsidiary of KeySpan may be subordinated debt of KeySpan and may be issued either under the KeySpan Indenture, a supplemental indenture entered into with a new trustee under the KeySpan Indenture or under a new

indenture that will contain provisions substantially similar to those contained in the KeySpan Indenture.

E. Guarantees

In addition, the Financing Order authorized KeySpan to maintain in effect and to amend, renew, extend and/or replace any and all of its existing guarantees, letters of credit, expense agreements and other forms of credit support ("Guarantees") with respect to the obligations of the Subsidiaries or which may be entered into or given prior to the completion of the Merger including the Guarantees listed in Exhibit C to the Financing Application. As stated in the Financing Application, at that time KeySpan had approximately \$2 billion in Guarantees outstanding which were expected to remain in place following the Merger. The Financing Order further authorized KeySpan to enter into additional Guarantees (*i.e.*, in addition to the existing Guarantees), subject to the appropriate Financing Parameters, with respect to the obligations of the Subsidiaries as may be appropriate or necessary to enable such companies to carry on in the ordinary course of their respective businesses in an aggregate principal amount not to exceed \$2.0 billion outstanding at any one time (not taking into account obligations exempt under rule 45).

At the time it received the Guarantees authorizations, KeySpan contemplated that all of its existing Guarantees be included within the scope of the Financing Order. However, in listing its existing Guarantees in Exhibit C of the Financing Application, KeySpan states that it inadvertently failed to include certain of its contractual obligations to Hawkeye (formerly known as KeySpan Energy Construction, LLC), which existed prior to the Merger under a written agreement, dated June 20, 2000 ("Purchase Agreement"), regarding the sale of KeySpan's subsidiary then known as KeySpan Energy Construction, LLC ("KECL"). At the Purchase Agreement closing which occurred prior to the Merger, all of KeySpan's ownership interests in KECL were transferred to WJH Equities, LLC, an unaffiliated entity. Subsequent to this transfer, KECL changed its name to Hawkeye.

The Purchase Agreement, provides, *inter alia*, that (i) KeySpan, through October 25, 2004, is obligated to make and execute guarantees of Hawkeye's debt to Hawkeye's lenders in an aggregate principal amount of up to \$13,000,000 (the "\$13,000,000 Guaranty"); and (ii) KeySpan, through October 25, 2004, is obligated take such steps (and provide such guarantees and

assurances) as Hawkeye may require to enable it to obtain bonds (including payment, performance and completion bonds) as Hawkeye may deem necessary or desirable in connection with projects to be undertaken by Hawkeye up to a maximum in the aggregate of bonds totaling \$60,000,000 in each calendar year (the "\$60,000,000 Guaranty"). In addition, KeySpan is obligated to provide support for a line of credit issued to an affiliate of Hawkeye in an amount up to \$12,000,000.

In Exhibit C of the Financing Application, KeySpan included its obligations to Hawkeye with respect to the \$13,000,000 Guaranty and the \$12,000,000 support for a line of credit. However, KeySpan states that it inadvertently failed to include in its request the existing \$60,000,000 Guaranty obligation to Hawkeye under the Purchase Agreement.

KeySpan requests that the Commission authorize KeySpan to make and provide additional guarantees and assurances to Hawkeye up to an aggregate of \$60,000,000 in any calendar year as set forth above. The \$60,000,000 Guaranty will be included in the total dollar amount of Guarantees currently authorized by the Commission. KeySpan will in no event exceed its \$2.0 billion limit on future Guarantees previously set by the Financing Order.

Except as stated in the application-declaration, KeySpan and the Subsidiaries are not seeking any other changes or modifications to the terms, conditions or limitations otherwise applicable under the Financing Order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46350; File No. SR-NASD-2002-86]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. To Establish and Set a Fee for a New Data Feed for the Nasdaq InterMarket

August 14, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 27, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On July 19, 2002, Nasdaq amended the proposal.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 7010(c), to make available a new data feed of market participant quotations from the Nasdaq InterMarket, Nasdaq's facility for over-the-counter trading of exchange-listed securities, and set a fee for purchase of that feed. The text of the proposed rule change is below. Proposed additions are in *italics*.

7010 System Services

(a)—(b) No Change.

(c) (1)—(2) No Change.

(3) The charge to be paid by the subscriber for each terminal receiving the iM Quotes Service shall be \$6 per month.

(d)—(r) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Today, Nasdaq provides the quotation information for participants in the Nasdaq InterMarket to the Securities Industry Automation Corporation ("SIAC"). SIAC, in turn, disseminates this real-time information via its Consolidated Quotation Service ("CQS") data feed along with the best bids and offers ("BBOs") from exchanges that participate in the Consolidated Quotations Plan ("CQ Plan"). Because Nasdaq operates as a national securities association, and not as an exchange, it is required and permitted to disseminate its InterMarket market participant quotations through SIAC, the securities information processor for the CQ Plan.

Once Nasdaq is an exchange, it will no longer be able to disseminate market participant quotations through SIAC because Rule 11Ac1-1 under the Act⁴ only provides for the dissemination of exchanges' BBOs through the consolidated data streams. As an exchange, Nasdaq's BBO will be disseminated through SIAC and factored into SIAC's calculation of the National BBO in NYSE- and Amex-listed issues.

Because Nasdaq InterMarket participants rely on the real-time market participant quotations, it is critical that Nasdaq continue to provide this information after it has registered as an exchange. Market participant quotations facilitate market participants' order routing decisions and are a source of market transparency regarding the depth and interest in the InterMarket that is useful to both traders and investors. Nasdaq is developing the "iM Quotes" data feed that will provide broker-dealers and market data vendors with access to real-time InterMarket participant quotations once Nasdaq is an exchange. Twenty-two market data distributors, including a number of broker-dealers, have already ordered the iM Quotes data feed.

The \$6 monthly per terminal fee will apply to all subscribers that access the iM Quotes market participant data on a real-time basis, either through a market data vendor like Bloomberg, ILX, or Reuters or through internal dissemination systems operated by broker-dealers. The \$6 charge will include all issues quoted through the InterMarket including both Amex- and NYSE-listed issues. Today, subscribers to Amex and/or NYSE data are entitled

to the corresponding InterMarket participant quotations that are disseminated by SIAC through the CQS data feed, although some market data vendors do not offer that data to their subscribers.

The proposed fee was derived, in part, on the anticipated traffic through the service in comparison to existing Nasdaq data feed services. Average daily message traffic in the iM Quotes feed is anticipated to be about 900,000 messages per day. This is about 11% of the average daily traffic associated with NQDS, the data feed that supports market participant quotations in Nasdaq-listed issues. The \$6 iM Quotes fee is 15% of the proposed fee of \$40 for QuoteView, which is the data entitlement, based on the NQDS data feed. In addition, Nasdaq considered the current costs of operating the NQDS data feed, and projected the annual operating costs for iM Quotes, adjusting for anticipated differences in traffic.

While the new data service will be introduced as early as September of 2002, Nasdaq will defer the effective date for this fee until January 1, 2003.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,⁵ in general, and with section 15A(b)(5) of the Act,⁶ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among member and issuers and other persons using any facility or system which the association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See July 19, 2002 letter from Jeffrey S. Davis, Associate General Counsel, Nasdaq, to Joseph Morra, Special Counsel, Division of Market Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, Nasdaq substituted new proposed rule language for the language provided in the original filing.

⁴ 17 CFR 240.11Ac1-1.

⁵ 15 U.S.C. 78o-3.

⁶ 15 U.S.C. 78o-3(b)(5).

longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-2002-86 and should be submitted by September 10, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 02-21128 Filed 8-20-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46337; File No. SR-NSCC-2002-04]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Modifying NSCC's Rules to Accept Trade Input for Debt Security Trades Executed on the American Stock Exchange from its Members for Comparison Processing

August 12, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),¹ notice is hereby given that on June 14, 2002, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will allow NSCC to accept directly from NSCC members for processing in NSCC's trade comparison service debt security trades executed on the American Stock Exchange ("Amex") that were previously reported to NSCC by the New York Stock Exchange's ("NYSE") Online Comparison System ("OCS").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

With the elimination of the use of OCS by the NYSE for debt security trades executed on the Amex, NSCC is modifying its rules in order to accept trade input for such trades from members for comparison processing. The proposed rule change will allow NSCC to process these trades in the same manner that it processes over-the-counter corporate bond trades submitted directly to it by its members for comparison. In addition, the proposed rule change reflects technical changes regarding (i) the use of Withhold tickets and (ii) the submission to NSCC of debt securities trades executed on the NYSE³ to conform the rules to current practice.

This filing enables debt security trades executed on the Amex⁴ to be submitted to NSCC in a cost efficient manner that is currently utilized by NSCC in connection with similar types of trades; therefore, NSCC believes it is consistent with the provisions of Section 17A of the Act, as amended, and the rules and regulations thereunder.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change effects a change in an existing service of NSCC that (i) does not adversely affect the safe-guarding of securities or funds in the custody or control of the clearing agency or for which it is responsible, and (ii) does not significantly affect the respective rights and obligations of the clearing agency or persons using the service, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁵ and Rule 19b-4(f)(4)⁶ promulgated thereunder. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-0609. Copies of the submission, all subsequent

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified parts of these statements.

³ All debt security trades executed on the NYSE are now submitted to NSCC by the NYSE Automated Bond System.

⁴ NSCC will also process other debt security trades that may have been previously submitted to NSCC via OCS if the trades are eligible to be processed in its Fixed Income Transaction System.

⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

⁶ 17 CFR 240.19b-4(f)(4).

⁷ 17 CFR 200.30-3(a)(12).